

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 8**

GBS CORP.¹

Employer

and

Case No. 8-RC-16140

**GENERAL TRUCK DRIVERS AND HELPERS
LOCAL NO. 92, AFFILIATED WITH THE
INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, AFL-CIO²**

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,³ the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

¹ The name of the Employer appears as amended at hearing.

² The name of the Petitioner appears as amended at hearing.

³ The Parties have filed briefs which have been carefully considered.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time production and maintenance employees and drivers located at the Employer's North Canton, Ohio facility, including all customer service representatives and the safety and facility maintenance coordinator, but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act, and assistant supervisors.

There are approximately 34 employees in the unit petitioned-for.

The Petitioner seeks to represent a unit of "[a]ll full-time and regular part-time production and maintenance employees and drivers, excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act, and the assistant supervisors."⁴ The Employer contends that the unit sought should also include customer service representatives because they are plant clerical employees who share a community of interest with the petitioned-for unit of employees. The Employer also contends that the unit should include the Employer's safety and facility maintenance coordinator who shares a community of interest with the petitioned-for unit. The Petitioner, however, asserts that the customer service representatives are office clerical employees who should be excluded from the unit, and the safety and facility maintenance coordinator is a supervisor within the meaning of Section 2(11) the Act, who should be excluded from the unit.

The Employer, GBS Corp., is an Ohio corporation with an office and place of business in North Canton, Ohio, where it is engaged in the sale and distribution of printed products. The

⁴ The petitioned-for unit appears as amended at hearing.

Employer's management consists of distribution manager David Hoskinson; two supervisors – Mike Kimmel and Cory Laudermilk; and three assistant supervisors – Eric Powell, Terry Libby, and Jack Warren. The Parties have stipulated that supervisors and assistant supervisors are excluded from the unit found appropriate herein. The Employer's "warehouse" workforce includes approximately 30 employees classified as either "pullers, packers, shippers, receivers, or drivers," three customer service representatives at issue herein, and two maintenance employees (Mike Lab, the safety and facility maintenance coordinator at issue herein, and employee Doug Simpson).

THE CUSTOMER SERVICE REPRESENTATIVES

The Employer operates a distribution center or warehouse where it stores, packs, and ships products for its customers. The record reveals that the three customer service representatives, Jenn Corbett, Leanne Check, and Janet Morris, perform "trouble shooting" duties with regard to the processing or movement of the Employer's product. In this connection, the record reveals that each customer service representative is responsible for specific tasks that enable the warehouse to function properly.

Distribution Manager David Hoskinson testified that the customer service representatives "screen" or handle phone calls from their "customers" who are actually the Employer's customer service employees throughout the country.⁵ These external customer service representatives are the individuals who have direct contact with the Employer's customers.

According to Hoskinson, the external customer service employees input information into the Employer's computer system, referred to as the "Smart-Link" system. For product that is coming into the warehouse, one of the Employer's receivers pulls the packing slip with the

⁵ For purposes of this proceeding and for the sake of clarity, I will refer to the Employer's outside customer service representatives, who are not at issue herein, as "external" customer service representatives to avoid confusion with the three customer service representatives at issue.

Employer's order numbers, inputs those into the system, and then "puts up" the product. According to Hoskinson, the product is then put in assigned bin locations in the warehouse.

The record reveals that Customer Service Representative Leanne Check works with the receiver employees, who unload the trucks and verify/check the freight. The receivers print receiving work sheets on the Smart-Link system. These receiving worksheets are then collected by Check every morning as she visits the various work areas in the warehouse. Check, who is responsible for all incoming orders, then performs data entry duties by logging the information into the computer system. Hoskinson estimates that 50% of Check's time each day is spent on data entry work, and the other 50% of the time is spent on the phone and correcting receiving worksheets. Check reports to, and is supervised by, Mike Kimmel, the Supervisor in the Employer's Receiving and "Cole Vision" departments.⁶

Hoskinson stated that, with regard to the outbound product, the external customer service representatives enter "releases" in the Smart-Link system which are printed out indicating the product the customers are requesting. In these instances, a "puller" employee physically retrieves the product requested and drops it off with a "packer" employee. The packer verifies the product, packs it, and then sends it to a "shipper" employee who ships the product to the customer. Hoskinson testified that the pullers are dependent upon Check's data entries in the performance of their duties.

A common carrier is then processed through the Smart-Link system and a Bill of Lading is created. The Bill of Lading is then sent to Customer Service Representative Janet Morris who is responsible for calling the common carrier to let them know there is product to be picked up at the warehouse. Hoskinson testified that, in performing these duties, Morris has contact with warehouse employee and common carrier shipper Chris Scheid. Hoskinson stated that Morris reports to, and is supervised by, Cory Lauder milk, the Employer's Supervisor in Shipping. The record reveals that the customer service representatives are trained on the Smart-Link system, as

⁶ The record reveals that Cole Vision is one of the Employer's customers.

are the shipping and receiving employees, who use the Smart-Link system in the performance of their work.

Hoskinson testified that the Employer, on average, receives approximately 125-150 releases in a single day that have to be shipped on the same day they are received. These releases are referred to as “hot releases” and approximately half of those “hot releases” have problems that require that attention of the customer service representatives. Hoskinson stated that, for example, a puller could find out there is not enough product to fill an order. The puller would bring the release to an assistant supervisor, who would usually give it to a customer service representative. The customer service representative would then call the external customer service representative in an attempt to resolve the problem.

According to Hoskinson, the customer service representatives spend approximately 50% of their time each day solving problems or “trouble shooting.” In this regard, the customer service representatives deal with external customer service representatives who may have the wrong forms, wrong information on the forms, or problems with the common carriers. The customer service representatives also handle return authorization forms that are generated if a customer receives the wrong product and wants to return it. Hoskinson stated that such forms are specifically handled by Morris. In this connection, the return authorization forms are faxed to the Employer by the external customer service representatives. Morris receives and reviews these forms and then takes them to the warehouse, usually to shipper Chris Scheid. Morris also collects the return authorization forms from all the workstations the following morning. Hoskinson estimates that Morris deals with return authorizations 15% of the time each day.

Shipper Employee Chris Scheid testified that Morris has helped him perform packing work in the warehouse, and that she completes Bills of Lading that he needs to perform his duties. In this connection, Scheid testified that he has contact with Morris on a daily basis and that he gives her “call-ins” every day at 2:00 p.m. In fact, Scheid testified that, in the performance of his duties, he speaks to Morris once or twice an hour.

According to Hoskinson, when the typical problems arise, for example, where a customer orders 500 units and receives only 100, the customer service representatives handle the problem, including going to the warehouse and doing a “balance check.” The customer service representatives collectively receive approximately 40 to 50 calls a day. Hoskinson testified that Customer Service Representative Jenn Corbett is responsible for trouble shooting. In this connection, he stated that Corbett spends approximately 50% of her time each day doing paperwork related to trouble shooting and the other 50% of the time is spent on the warehouse floor performing corrective actions, meeting with employees, collecting paperwork, investigating problems, pulling samples, and doing bin checks.

Corbett, who testified at the hearing, stated that 95% of her time is spent problem solving or trouble shooting, consisting of taking phone calls, checking inventory, and talking to warehouse employees. Corbett is responsible for generating “release status reports” once a week. She also is responsible for investigating releases. In this connection, she stated that she first checks the Smart-Link system to see if the release had been shipped. If she confirms that it was shipped, she can close the release out and move on to the next one. If she cannot confirm shipment, she has to go down to the warehouse, pull the hard copy of the release, and perform an inventory check if she can reach the product.⁷ If she is unable to reach the product in the bins, she usually gets the assistance of a puller to help her. Corbett testified that she has contact with puller employee Stan Cox approximately 30 times a week. According to Corbett, she has to “go to the [warehouse] floor” half of the times she is problem solving, and that she interacts with warehouse employees to find the product. Hoskinson also testified that the customer service representatives interact with the warehouse employees on a daily basis in the performance of their trouble shooting or problem solving activities.

Hoskinson further testified that the customer service representatives interact with the warehouse employees when they participate in “Corrective Action Teams.” When the Employer

⁷ Corbett testified that she is “in and out of the office” from 30 to 60 times a day.

experiences problems with shipments or “mis-shipments,” a Corrective Action Team gets the relevant paperwork, reviews it, discusses the problem, checks the information with the appropriate packer and shipper, and they attempt to determine why the problem occurred. The Corrective Action Team consists of several supervisors, various warehouse employees included in the unit found appropriate herein, and Customer Service Representatives Corbett and Check.

The record reveals that the customer service representatives have received training to perform bargaining unit or warehouse work, specifically training in the packing and shipping areas of the distribution center. In this regard, Morris and Check have received training in packing duties, and Corbett has received training in packing and shipping duties. Corbett and Morris also possess the requisite licenses for performing “pallet checks,” and Corbett stated that she is qualified to perform work on the “pallet jack” machine.⁸ Conversely, the record reveals that some warehouse employees have received, or are in the process of receiving, training in some of the customer service representatives’ duties. Specifically, receiver employee Steve Cox is receiving training on data entry work, which is work performed by Check. Likewise, shipper employee Chris Scheid testified that he has been trained to call in common carriers on certain occasions, which is work normally performed by Morris.

In addition to being trained to perform warehouse work, the record also reveals the customer service representatives actually perform warehouse work. In this connection, the customer service representatives substitute for warehouse employees when they are ill or on vacation. Corbett testified that she has performed packing and shipping work with various warehouse employees for “weeks at a time.” Likewise, for the months of January and February 2000, Corbett stated she came into work a couple of hours early everyday to perform packing work with the warehouse employees on the Cole Vision account. Corbett also stated that she has worked with packer employee Bonnie Schultz four or five times a year. In addition, Corbett

⁸ The record reveals that the “pallet jack” is a machine used by warehouse employees. Corbett stated that her “pallet jack” qualification resulted from a training class she attended with warehouse employees.

stated she performed packing and shipping work with warehouse employees for a week on a Roadway project that required the Employer to send out large shipments of books.

Corbett also testified that she has worked on warehouse inventories with unit employees in the past, and specifically, several over the last few months. Corbett stated that Morris has also performed inventory work and has come in early to help the warehouse employees with packing work.

The record reveals that customer service representatives interact with unit employees while serving on various Employer “committees.” The record reveals that Corbett serves on the monthly Safety Committee meeting with several unit employees. Corbett also serves on the Employer’s “Task Force Committee” with warehouse employees, which meets every two weeks.

The record also reveals that customer service representatives attend meetings with the warehouse employees on a regular basis. Hoskinson stated that the customer service representatives attend warehouse employee meetings once every six weeks. Corbett also attends a “packer, puller, and shipper meeting” held by those departments. According to Corbett, Check also attends meetings for the employees who perform work on the Cole Vision account because she takes notes of the meetings and she is required to know the activities of the Cole Vision account.⁹

The customer service representatives each have cubical-like offices that are located in the same section of the warehouse as management’s offices. Hoskinson stated that the offices are in close proximity to the shipping and receiving area of the warehouse. The record reveals that none of the customer service representatives has access to personnel files or confidential information. Hoskinson testified that Corbett does, on occasion, type documents for him because he does not have a personal secretary. However, the record did not reveal the frequency

⁹ Corbett stated that Check should be familiar with the Cole Vision account activities because, if there are an unusual amount of return authorizations in Cole Vision, she must deal with them.

of such work and Hoskinson inferred that such work was sporadic at best when he testified that he “could not remember” the last time Corbett did typing work for him.¹⁰

According to Hoskinson, Corbett does perform some work dealing with the employees’ time cards. Specifically, at the end of every pay period, she generates time sheets for the employees and then gives them to Hoskinson and the supervisors to approve and sign-off on. The managers then return the time sheets to Corbett, who passes the documents to the Employer’s payroll department. Corbett testified that it only takes approximately 2 hours every other Monday to generate the payroll records. Corbett also orders supplies for the warehouse and Morris orders packing supplies for the packing employees.

The record reveals that customer service representatives, like the unit employees, punch a time clock, are hourly paid, and are on the same general wage scale.¹¹ The customer service representatives and unit employees also have the same employee benefits, holidays, sick days, insurance, and profit sharing program. Customer service representatives, like the warehouse employees, are also subject to annual reviews by the Employer and they work similar hours.¹²

In determining whether the customer service representatives are to be included in the petitioned-for unit, I note that the Board has generally excluded office clericals from production and maintenance units. **Hygeia Coca-Cola Bottling Co., 192 NLRB 1127, 1129 (1971); Westinghouse Electric Corp., 118 NLRB 1043 (1957).** However, plant clerical employees are customarily included in a production and maintenance bargaining unit because they generally share a community of interest with the employees in the unit. **Raytee Co., 228 NLRB 646 (1977); Armour and Co., 119 NLRB 623 (1957).** The Board has noted that “the distinction drawn between office clericals and plant clericals is not always clear.” **Hamilton Halter Co., 270 NLRB 331 (1984).** In this regard, the test is usually whether the employees’ duties are

¹⁰ Corbett testified that she does not perform typing work for the Employer’s corporate management.

¹¹ The record reveals that the customer service representatives’ wages range from \$8.50 an hour to \$10.50 an hour. Likewise, the warehouse employees’ wages range from \$8.10 an hour to \$10.60 an hour.

¹² The record reveals that the customer service representatives’ hours are 8:00 a.m. to 5:00 p.m.; the packers’ hours are 8:00 a.m. to 4:30 p.m.; and the pullers’ hours are 7:30 a.m. to 4:30 p.m.

related to the production or service process (plant clericals) or related to general office operations (office clericals). The distinction is rooted in community-of-interest concepts. **Mitchellace Inc., 314 NLRB 536 (1994); Cook Composites & Polymers Co. 313 NLRB 1105 (1994).** Some of the duties that plant clericals generally perform include timecard collection, transcription of sales orders to forms to facilitate production, maintenance of inventories, and ordering supplies. **Hamilton Halter Co., supra; Magna Corp., 261 NLRB 104 (1982).** On the other hand, typical office clerical duties are billing, phone and mail. **Dunham's Athleisure Corp., 311 NLRB 175 (1993).**

Based on the record in this case, I find that the customer service representatives are plant clerical employees and should be included in the unit found appropriate. In this regard, the record reveals that the customer service representatives' problem solving or "trouble shooting" duties are an integral part of the Employer's business of receiving its product and then moving the product to its customers. The record shows that each customer service representative performs her own specific duties that enable the warehouse to function properly in receiving, storing, packing and shipping product to its customers. The customer service representatives' work utilizes the "Smart-Link" system, which is also used by various unit employees in the warehouse production process. The record shows that the data entry and documentation generated and tracked by the customer service representatives is critical to the Employer's mission of supplying customers with its product. The Board has found that warehouse clericals should be included in warehouse units in cases where the duties of the clericals in issue are integral to the function of the warehouse unit. **John N. Hansen Co., 293 NLRB 63, 64-65 (1989); S & S Distributors Warehouse, 277 NLRB 1293 (1985).**

Besides the customer service representatives' work being an integral part of the Employer's production process, the record reveals that their problem solving duties bring them into frequent and direct contact with the warehouse employees.¹³ In this regard, Check, besides

¹³ "UPS Packer" employee Bonnie Schulze, who testified on behalf of the Petitioner, asserted that the customer service representatives have infrequent "interaction" with her when there is a problem and she interacts

performing data entry duties, works with receiver employees and has direct daily contact with them when she collects the receiving worksheets every morning. The record reveals that Morris, who is responsible for calling common carriers to pick up the Employer's product and for receiving and reviewing return authorization forms, has direct and frequent contact with warehouse employees in the performance of those duties. Likewise, the record reveals that Corbett, who is primarily responsible for trouble shooting, spends from 50% to 95% of her time on the warehouse floor performing corrective actions, meetings with employees, collecting paperwork, investigating problems, pulling samples, and doing bin checks. Additionally, Corbett has significant contact with warehouse personnel in the performance of her duties regarding the generation of "release status reports." Thus, the record as a whole reflects that the customer service representatives have frequent, direct, and significant contact and interaction with the warehouse employees in the performance of their distinct and specific duties.

In support of my finding that the customer service representatives are plant clerical employees, I note that, as mentioned above, the customer service representatives have received training to perform bargaining unit work and, conversely, some warehouse employees have received training in some duties of the customer service representatives. Most importantly, however, besides being trained to perform unit work, the record reveals that the customer service representatives actually perform unit work when they are needed or when they substitute for warehouse employees who are ill or on vacation. This fact is best evinced by Corbett's

more with the Employer's office clerical employees in the corporate office than with the customer service representatives. I find these assertions inconsistent with the record evidence as a whole which reveals that the customer service representatives have frequent and direct contact with the warehouse employees. I note that such assertions are not only contrary to the record evidence, they are also belied by Schulze's own admissions in the record that she has contact with the customer service representatives in various situations. In this connection, I note that Schulze testified her duties require her to give Fed Ex bills to Morris and that she lets Morris know how many cartons have to be picked up that day; that Corbett has, on occasion, helped her pack and ship product; and specifically that Corbett has performed packing and shipping work with her for UPS. I note that the record also shows Schulze acknowledged: that Corbett helped in the warehouse in February when the Employer was shorthanded; that she has seen Corbett interact with other warehouse employees; that she has seen Corbett and Morris attend meetings with warehouse employees; and that the customer service representatives perform bin work in the warehouse.

testimony that she has performed packing and shipping work with warehouse employees for “weeks at a time” and on a daily basis in the months of January and February 2000.

In further support of my finding that the customer service representatives are plant clericals, I note that they have contact and interaction with warehouse employees by virtue of their participation in “Corrective Action Teams,” their service on various Employer committees, and their attendance at meetings with the warehouse employees on a regular basis.

I also find that the customer service representatives share a sufficient community of interest with the warehouse employees, not only because they have regular and frequent contact and interaction with such unit employees, but because they, like the unit employees, punch a time clock, are hourly paid, are on the same general wage scale, and share common supervision with the warehouse employees. In addition, the customer service representatives and unit employees share the same employee benefits, holidays, sick days, insurance, and profit sharing program.

In asserting that the customer service representatives should be excluded from the unit, the Petitioner argues the customer service representatives’ offices are located close to management’s offices, and that Corbett performs some clerical typing work for Hoskinson. As mentioned above, I find the record does not reveal the frequency of such typing work, but I note that Hoskinson testified that he “could not remember” the last time Corbett did any typing work for him. Where the Board has found that clerical employees’ tasks are functionally integrated with the Employer’s production or service process, as I have in the instant case, it has found certain employees to be plant clericals rather than office clericals, even though those clericals had separate work locations in enclosed offices and even though they exercised some inherent clerical functions. See **Syracuse University**, 325 NLRB 162, 169 (1997) and **Columbia Textile Services**, 293 NLRB 1034 (1989). The Board has found that, even though clerical employees exercise secretarial skills and may be classified as “secretaries,” “stenographers,” or “clerk typists,” that is not an obstacle to finding them to be plant clericals, given other factors which tie them to the production process and other production employees. **Gordonville Industries, Inc.**,

252 NLRB 563, 591 (1980); Swift & Company, 119 NLRB 1556, 1567 (1958); Weyerhaeuser Company, 173 NLRB 1170, 1171, fn. 8 (1968).

Thus, based on the record as a whole and the well established case law discussed above, I find that the customer service representatives are plant clerical employees who share a sufficient community of interest with the warehouse employees to warrant their inclusion in the unit. Accordingly, I shall include the customer service representative in the unit found appropriate herein.

THE SAFETY AND FACILITY MAINTENANCE COORDINATOR

The record reveals that employee Mike Lab is the Employer's safety and facility maintenance coordinator. Hoskinson testified that Lab, who was previously a driver for the Employer, is also a "backup" driver for the Employer. The record reveals that Lab performs general maintenance work for the Employer. Lab has an office that is adjacent to the warehouse management offices and he reports to Hoskinson. The record reveals that maintenance employees Lab and Doug Simpson are hourly paid, punch a time clock, and they have a wage scale that commences at \$8.10 an hour. Lab's hours of work are from 8:00 a.m. to 5:00 p.m. and he receives the same benefits as the warehouse or unit employees.

Hoskinson stated that Lab is trained regarding OSHA violations and material data safety reports. Lab receives all "maintenance request forms," reviews them, and prioritizes them. The record shows that the Employer has safety violation forms or safety concern records that can be written up by any employee to report safety concerns. Hoskinson testified that these safety concern records are given to Lab, who investigates them as the Employer's safety coordinator. However, Hoskinson stated that Lab does not have authority to take any corrective or disciplinary actions against employees based on safety violations or infractions. Hoskinson stated that even though Lab refers safety concerns to him, he does not receive recommendations from Lab regarding discipline. Hoskinson unequivocally stated that the Employer's ultimate decision regarding discipline lie with him, even if the infraction comes to his attention via a safety concern report.¹⁴ Employee Chris Scheid also testified that Lab does not have authority to discipline employees, and that he does not regard Lab as a supervisor.

¹⁴ Corbett testified that Lab can give the forms to the supervisors, he can investigate the report himself, or he can bring up the safety report in the Employer's safety meeting. The Safety Committee has made a recommendation to have an employee retrained and it can review a safety report to attempt to keep the safety violations from happening again. Corbett testified that, even though all safety concern records go to Lab, he does not make any decisions regarding discipline.

Hoskinson testified that both he and Lab created a schedule for maintenance employee Doug Simpson and that Lab “coordinates” Simpson’s work. The record reveals that Simpson’s work consists of emptying the trash, changing light bulbs, getting the mail, dusting off boxes in the warehouse, and cleaning the coffee area. Hoskinson stated that Lab spends approximately 10% of his time “overseeing” Simpson’s work; however, he stated that he (Hoskinson) evaluates Simpson’s work.

Hoskinson further testified that Lab does not have authority hire or discharge employees or make recommendation in that regard. Furthermore, Hoskinson testified that Lab has no authority to discipline employees, recommend discipline, approve time off for employees, and he has never recommended wage increases for employees or promoted employees. The record also shows that Lab did not receive supervisory training with the Employer’s supervisory personnel.

As noted above, the Petitioner contends that Mike Lab is a supervisor within the meaning of the Act and must, therefore, be excluded from the unit. The Employer contends that Lab is not supervisor and should be included in the unit.

Section 2(3) of the Act excludes from the definition of “employee” “any individual employed as a supervisor.” Section 2(11) of the Act defines supervisor as:

any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a routine or clerical nature, but requires the use of independent judgment.

It is well established that the possession of any one of the indicia specified in Section 2(11) of the Act is sufficient to confer supervisory status on the employee, provided that the authority is exercised with independent judgment on behalf of management and not in a routine manner. **Clark Machine Corporation, 308 NLRB 555 (1992); Bowne of Houston, Inc., 280 NLRB 1222, 1223 (1986).** It is also well established that the burden of proving supervisory

status rests on the party asserting such status. Northcrest Nursing Home, 313 NLRB 491, 496 at fn. 26 (1993). Billows Electrical Supply of Northfield, Inc., 311 NLRB 878 (1993); The Ohio Masonic Home, Inc., 295 NLRB 390 (1989); Tucson Gas & Electric Co., 241 NLRB 181 (1979).

In addition to the enumerated powers in Section 2(11) of the Act, the Board may also look to certain other factors as evidence of supervisory status, e.g., the individual's attendance at supervisory meetings and the ability to evaluate employees. See Flexi-Van Service Center, 228 NLRB 956, 960 (1977).

In applying the traditional criteria for the establishment of supervisory status to the facts of the instant case, I find for the reasons stated below that the Petitioner has failed to meet its burden of proving that Lab is a supervisor within the meaning of Section 2(11) of the Act.

The record in this case reveals that Lab does not have the authority to hire employees, discharge employees, or make any effective recommendations in that regard. Lab also does not have authority to transfer, suspend, layoff, recall, promote, assign or reward employees, or to adjust employee grievances.

The record shows, as mentioned above, that Lab investigates and sometimes reports safety concerns or violations to management. The Petitioner contends that Lab's duties in this regard demonstrate that Lab exercises "independent judgement in the discipline of warehouse workers for safety violations." However, the record demonstrates that Lab does not have the authority to discipline employees or to effectively recommend discipline. Rather, Lab's role as safety and facility maintenance coordinator and its impact, if any, on the Employer's disciplinary process, is purely reportorial in nature. No evidence was offered to demonstrate that any of the safety reports investigated and reported by Lab has lead to the imposition of discipline.

Likewise, no evidence was presented to demonstrate that Lab has issued discipline or recommended the implementation of discipline for safety infractions he has reported to management.¹⁵ The mere factual reporting of employee infractions that do not automatically affect job status or tenure does not constitute supervisory authority. **The Ohio Masonic Home, Inc.**, *supra*; **Passavant Health Center**, 284 NLRB 887, 889 (1987).

Specifically, with regard to the reporting of safety infractions, I note that the Board, in **Brown & Root, Inc.**, 314 NLRB 19, 23 (1994), found that a safety inspector's written citations for safety violations did not constitute effective recommendations for discipline where the evidence showed that the citations themselves did not result in discipline and it was clear that no disciplinary decisions were made without independent investigation by acknowledged supervisors. See also **Ball Plastics Division**, 228 NLRB 633, 634 (1977).

The Petitioner also argues that Lab is a supervisor because he allegedly schedules maintenance employee Doug Simpson's work, prioritizes his work, assigns him to perform that work, and directs him in doing that work. With regard to this assertion, I note that Hoskinson testified that both *he* and Lab created a schedule for Simpson, not just Lab alone. Furthermore, I note that Simpson's work consists of emptying the trash, changing light bulbs, getting the mail, dusting off boxes, and cleaning the coffee area in the warehouse. I find that the scheduling, assignment, prioritization, coordination, and direction of such routine tasks does not require the use of independent judgement. Rather, I find that such work is routine, repetitive, regimented,

¹⁵ In its brief, the Petitioner asserts that "...the record evidence from Bonnie Schulze is that [Lab] indeed has disciplined workers in the past." In this connection, I note that Schulze, when asked by the Petitioner if she was aware of any discipline that has transpired because of a write-up from Lab, responded: "Well I think one of the pullers – I'm not sure that it was Mike [Lab], it might have been the committee. One of the pullers was kind of put on probation, he wasn't on the picker for a couple of days because he was kind of being a little hazardous." The record does not show that Schulze unequivocally stated that Lab has disciplined employees. Thus, contrary to the Petitioner's assertion above, I find that the record does not establish that Lab has ever issued discipline to employees or that he has even effectively recommended such discipline.

and involves little or no independent thought, and that factor is insufficient to make Lab a supervisor within the meaning of the Act. See *Williamson Piggly Wiggly, Inc.*, 280 NLRB 1160, 1167 (1986), affirmed 827 F.2d 1098 (6th Cir. 1987); *Cook Composites & Polymers Co.*, supra at 1106; *Highland Telephone Cooperative*, 192 NLRB 1057 (1971); *Commercial Fleet Wash*, 190 NLRB 326 (1971).

Accordingly, based on the foregoing and the record as a whole, I find that Mike Lab is not a supervisor within the meaning of Section 2(11) of the Act. I also find that Lab shares a sufficient community of interest with the other employees in the petitioned-for unit that warrants his inclusion in the unit. In this regard, I note that Lab is hourly paid and punches a time clock, like the warehouse employees. In addition, Lab receives the same vacation days and benefits as the warehouse or unit employees, and he has frequent contact with the unit employees in the performance of his duties. Accordingly, I shall include the Employer's safety and facility maintenance coordinator in the unit found appropriate herein.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees

engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by the General Truck Drivers and Helpers Local Union No. 92, affiliated with the International Brotherhood of Teamsters, AFL-CIO.

LIST OF VOTERS

In order to ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. **Excelsior Underwear Inc.**, 156 NLRB 1236 (1966); **N.L.R.B. v. Wyman-Gordon Co.**, 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this decision. **North Macon Health Care Facility**, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington, by January 22, 2001.

Dated at Cleveland, Ohio this 8th day of January 2001.

/s/ Frederick J. Calatrello

Frederick J. Calatrello
Regional Director
National Labor Relations Board
Region 8

440-1760-2400
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